

INDUSTRIAL ASSISTANCE AGREEMENT BETWEEN
THE STATE OF UTAH
AND
Company

This Industrial Assistance Agreement (this "Agreement") is made and entered into this ____ day of ____ - ____ (the "Effective Date"), by and between _____ a _____ (hereinafter referred to as the "Applicant") and the State of Utah, acting through the Governor's Office of Economic Development as Administrator of the Industrial Assistance Fund (hereinafter referred to as the "State").

RECITALS

A. The State of Utah has determined that fostering and developing industry in the State is a public purpose desirable to assure the welfare of its citizens, the growth of its economy, and adequate employment of its population; and in furtherance thereof, has enacted Utah Code Ann. Sec. 9-2-1201, et seq. (1997) (the "Act") pursuant to which the Industrial Assistance Fund (the "IAF") was created; and

B. The Administrator, as defined in the Act, has determined that in order to qualify for assistance from such fund, a business must show promise and commitment to sustained, long-term permanent growth of its operations in the State; and

C. Applicant shows such potential and is willing to have sustained, long-term, permanent growth of its operations in the State as set forth herein; and

D. Applicant is a company that is (i) a part of a Targeted Industry, (ii) located in an Economically Disadvantaged Rural Area, (iii) creating an Economic Impediment or (iv) a Replacement Company, as such terms are defined in Sec. 9-2-1202 of the Act; and

E. With the concurrence of the Governor's Board of Business and Economic Development, the Administrator has determined that Applicant qualifies for assistance from the IAF;

F. Applicant and the Administrator expect that Applicant's expansion of its business in the State of Utah shall provide approximately ____ new full-time jobs with a salary exceeding ____ % of the ____ median salary (the "County Median Salary") for each year as such wage is determined by the Governor's Office of Economic Development (plus such performance incentives and benefits as Applicant may provide for its employees) in the State over the next 7 years.

G. [This Recital Section G need not be completed but may in the Administrator's sole discretion be waived, cancelled and deleted in its entirety if the IAF assistance is given to Applicant because (i) it is locating to an Economically Disadvantaged Rural Area, (ii) Applicant is owned by a cooperative consisting solely of persons who reside in an Economically Disadvantaged Rural Area or (iii) Applicant is part of a Targeted Industry

each as defined in the Act.] Applicant intends to expand its business in the State of Utah, which the parties have found shall provide (a) more than \$ _____ Provide Money _____ in new contract expenditures for properties, improvements, services, equipment, supplies, wages and benefits and such amount shall be at least 2 times more than the money provided to the Applicant from the IAF for each year of the five-year period beginning with the delivery of the IAF assistance;

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

1.1 DEFINED TERMS. As used in this Agreement, the following terms shall have the meanings set forth respectively after each in addition to other terms defined in this Agreement.

"Acceleration Event" has the meaning given in Article VIII of this Agreement.

"Act" has the meaning given in Recital Section A above.

"Administrator" means the Governor's Office of Economic Development of the State of Utah.

"Affiliate" means, as to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (and its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, or power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Agreement" means this Agreement, either as originally executed or as it may from time to time be supplemented, modified, amended, restated or extended.

"Annual Earned Credits Report" means the report filed with the Administrator by the Applicant, detailing the IAF Disbursement for which Applicant has qualified in the immediately preceding IAF Disbursement Period. Applicant also shall list, describe and set forth on each Annual Earned Credits Report that it submits to the Administrator the number of Earned Credits that it claims to have earned during the immediately preceding IAF Disbursement Period and a projection indicating the amount and type of Earned Credits anticipated to be claimed for the coming IAF Disbursement Period. The Annual Earned Credits Report must include verifiable evidence in support of Applicant's claim for Earned Credits. The Annual Earned Credits Report shall describe with particularity the basis for the Earned Credits claimed. If Applicant believes that any information contained in the Annual Earned Credits Report qualifies as business confidential information and desires to protect it, Applicant must follow the requirement referenced in Section 10.7 hereinafter.

"Applicant" has the meaning given in the first paragraph of this Agreement, above.

"Base Year Qualifying FTEs " means the number of full-time employees of Applicant that are Utah Residents working at the Project site in the State of Utah as of _____ that are paid at least the Qualifying Annual Salary and who are further listed in Attachment I attached hereto. Attachment I lists all full-time employees of Applicant at the Project Site by name and by job title or description and also designates which employees are paid a salary that is equal to or greater than the Qualifying Annual Salary.

"Cash" means, when used in connection with any Person, all monetary and non-monetary items belonging or attributable to such Person that are treated as cash in accordance with this Agreement and GAAP.

"County Median Salary" has the meaning given in Recital Section F above.

"Default" means any Event of Default and/or any event that, with the giving of notice or passage of time or both, would be an Event of Default.

"Dollars" or "\$" means United States dollars.

"Earned Credits" or "Credits" is the unit of measurement used herein by the State to measure the economic activity and benefit to the State of the actions taken by Applicant in each Disbursement Period. Earned Credits or Credits also serve as the basis for determining the amount of IAF Disbursement funds to be distributed to Applicant. Further, any Earned Credits or Credits validly earned and received by Applicant under the terms of this Agreement may be used by Applicant in lieu of a cash repayment of all or part of the Total IAF Disbursements that it receives and would otherwise be required to repay under Section 9-2-1204 of the Act.

"Effective Date" means the date set forth in the first paragraph of this Agreement above.

"Event of Default" means the occurrence of any of the events described in Section 9.1, provided that any requirement for notice or lapse of time has been satisfied.

"FTE" means a single, individual, full time employee of Applicant's Utah Business that is a Utah Resident and employed at least 40 hours per week (excluding lunch) during each week of any IAF Disbursement Period in the State except for all official state and federal holidays and permitted time off consisting primarily of vacation and sick leave customary for like positions in the same industry as Applicant. Each FTE shall be entitled to the same basic health insurance, retirement and other benefits, if any, given by Applicant to its other FTEs excluding those benefits given to any of Applicant's executive and other highly compensated employees. When counting FTEs, if an FTE has its employment with Applicant terminated for any reason before completion of the applicable IAF Disbursement Period, another person otherwise meeting the requirements described above may be promptly hired full time to fill the terminated FTE's position and complete the year of qualifying full-time employment. In such case, Applicant and the

Administrator would count the combined contribution of these two (2) full time employees as one (1) FTE.

"GAAP" means United States generally accepted accounting principles, consistently applied.

"IAF" has the meaning given in Recital Section A above.

"IAF Disbursement" means the grant of any portion of the Total IAF Disbursements made by the State to Applicant pursuant to this Agreement as more fully described in Article III. The sum of all IAF Disbursements shall equal the Total IAF Disbursements.

"IAF Disbursement Period" means one of the seven (7) year periods of time in which IAF Disbursement funds may be distributed to Applicant, except for the sixth and seventh IAF Disbursement Periods which shall primarily be used by the Administrator for monitoring Applicant's continued employment of any FTEs hired during the fourth and fifth IAF Disbursement Periods for purposes of the recapture provisions described in Section 4.4 below.

"IAF Documents" means, collectively, this Agreement, the application, and any other exhibits, certificates, attachments, documents or agreements of any type or nature executed or delivered by Applicant and/or any one or more of its Subsidiaries or Affiliates to the State in any way relating to or in furtherance of this Agreement, in each case either as originally executed or as the same may from time to time be supplemented, modified, amended, restated or extended.

"IAF Proceeds" means any Cash or Dollars, advanced by the State to Applicant pursuant to this Agreement.

"Obligations" means all present and/or future obligations of every kind or nature of Applicant at any time and/or from time to time owed to the State, under any one or more of the IAF Documents, whether due or to become due, matured or unmatured, liquidated or unliquidated or contingent or non-contingent including obligations of performance as well as obligations of payment, and including interest that accrues before or after the commencement of any bankruptcy or insolvency proceeding by or against Applicant.

"Officer" means without limitation any person who is authorized by Applicant's bylaws, operating agreement or other charter documents or pursuant to a delegation of authority in a resolution of its board of directors, managers or other governing body to legally bind Applicant, and to make written or oral requests to the State for IAF Disbursements under this Agreement.

"Person" means any individual or entity, whether trustee, corporation, general partnership, limited partnership, limited liability company, sole proprietorship, joint stock company, trust, unincorporated organization, bank, business association, firm, joint venture, government, governmental agency, or otherwise.

"Project" means the project as described in the Project Description, the Project Schedule, the Projected Employment Growth, and Article II.

"Project Description" means a detailed description of the Project to be funded in whole or in part by the IAF Disbursements, including descriptions of the improvements to be made along with a summary of all one-time, non-recurring costs associated with the construction and development of the Project, which is attached to this Agreement as Attachment II; provided, however, that said description set forth in Attachment II may be amended by Applicant, in its good faith judgment and in the ordinary course of business, so long as such changes do not materially amend the original scope of the Project except for an expansion of it.

"Project Schedule" means the description of the projected dates by which various phases of the Project are currently expected to be completed, which schedule is attached to this Agreement as Attachment III.

"Projected Employment Growth" means the estimated number of new FTEs Applicant expects to hire during each IAF Disbursement Period as a result of, or in furtherance of, the Project, including a designation of the number of FTEs that will be paid a salary equal to or in excess of the Qualifying Annual Salary all as set forth in Attachment IV.

"Qualifying Annual Salary" means for any IAF Disbursement Period during the Term of this Agreement, the salary that equals or exceeds ____ % of the County Median Salary. For the current year, ____ % of the County Median Salary is \$ ____.

"Qualified FTE" means any new FTE other than the Base Year Qualifying FTEs who earn a Qualified Annual Salary and who have been newly hired by Applicant at the Project as more further described in Section 4.1 below.

"State" has the meaning given in the first paragraph of this Agreement, above.

"Term of this Agreement " means that certain period of time commencing on the Effective Date and terminating six (6) years after the last day of the first IAF Disbursement Period, plus the period reasonably necessary to complete the deliveries and reviews pursuant to Sections 3.2(c), 3.2(d) and 7.1(e) hereof.

"Total IAF Disbursements" means the aggregate amount of IAF Disbursements to be made by the State to Applicant pursuant to this Agreement as more fully described in Section 3.1.

"Utah Business" means a business that (a) is licensed, registered and qualified to do business in the State of Utah, (b) has a physical presence in the State, (c) has employees that are Utah Residents, and (d) pays taxes in the State of Utah. This Utah Business definition does not include "pass-through" operations for out-of-state business or businesses that operate from a post office box or in other similar fashion.

"Utah Resident" means a person who resides in the State and pays Utah State income taxes.

1.2 ACCOUNTING TERMS. All accounting terms not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, except as otherwise specifically prescribed herein.

ARTICLE II PROJECT DESCRIPTION

Applicant intends to _____ as more specifically described in Attachment II, "Project Description"; Attachment III, "Project Schedule"; and Attachment IV, "Projected Employment and Salary Growth," which are each attached hereto and by this reference specifically made a part hereof.

ARTICLE III IAF DISBURSEMENTS

3.1 TOTAL IAF DISBURSEMENTS. Subject to and in accordance with the terms and conditions of this Agreement, and in reliance upon the representations, warranties and covenants of Applicant hereinafter set forth, the State hereby agrees to disburse to Applicant a principal amount not to exceed \$_____ (the "Total IAF Disbursements").

3.2 DISTRIBUTION OF IAF DISBURSEMENTS. The Total IAF Disbursements will be distributed by the State as follows:

(a) The Total IAF Disbursements will be distributed in [insert "equal parts" or "unequal parts of _____"] over the first five IAF Disbursement Periods as provided herein. The maximum amount that may be paid in any IAF Disbursement Period is set forth in Section 3.2(b) below. The first IAF Disbursement Period shall commence on [insert date] or [insert a specific event like receipt of a certificate of occupancy after Applicant's construction of its building located at . . ., etc.], whichever is the first to occur. The first IAF Disbursement Period shall terminate twelve (12) months thereafter. The second IAF Disbursement Period shall then commence on the day after the last day of the first IAF Disbursement Period and it also shall terminate twelve (12) months later on its anniversary date. The third through the seventh IAF Disbursement Periods also shall begin and end in such successive twelve (12) month periods. No Earned Credits may be earned or claimed by Applicant during the sixth and seventh IAF Disbursement Periods. The sixth and seventh IAF Disbursement Periods shall be used by the State to monitor Applicant's ongoing compliance and continued employment of the FTEs hired in the fourth and fifth IAF Disbursement Periods, as applicable.

(b) IAF Disbursements under this Agreement shall not exceed _____ dollar amount _____

for the first IAF Disbursement Period, _____ dollar amount _____ for the second IAF Disbursement Period, _____ dollar amount _____ for the third IAF Disbursement Period, _____ dollar amount _____ for the fourth IAF Disbursement Period and _____ dollar amount _____ for the fifth IAF Disbursement Period, subject to the maximum amount of the Total IAF Disbursements that may be disbursed under this Agreement. No IAF Disbursements shall be made for the sixth and the seventh IAF Disbursement Periods.

(c) Within sixty (60) days after the end of each IAF Disbursement Period, Applicant shall file and submit the Annual Earned Credits Report to the Administrator. The Annual Earned Credits Report shall list, describe and set forth (i) the number of Earned Credits that Applicant claims to have earned during the immediately preceding IAF Disbursement Period, (ii) the continued employment or termination of employment of those FTEs previously claimed by Applicant and approved by the Administrator as Earned Credits, and (iii) the request of Applicant for distribution of the IAF Disbursement for which it believes it is entitled.

(d) The State shall have the right to audit the Annual Earned Credits Report submitted by Applicant together with any and all supporting records. If Applicant provides supporting records and other necessary assistance in a timely manner and otherwise shows that it has met the disbursement requirements contained herein, then within sixty (60) days of the Administrator's receipt of the Annual Earned Credits Report, the State shall (i) approve and distribute those IAF Disbursements equal to the number of Earned Credits received by Applicant and for which Applicant has duly qualified, but in all events not to exceed the annual IAF Disbursement amounts set forth in Section 3.2(b) above, or (ii) notify Applicant in writing of its disapproval of the claimed Earned Credits and its grounds for doing so. If the State disapproves the claimed Earned Credits, Applicant may thereafter submit an amended Annual Earned Credits Report which addresses the stated basis for disapproving the previously filed Annual Earned Credits Report. If the State disapproves the claimed Earned Credits, Applicant may within thirty (30) days thereafter submit an amended Annual Earned Credits Report which addresses the stated basis for disapproving the previously filed Annual Earned Credits Report. Within thirty (30) days of this appeal, the State shall review such amended Annual Earned Credits Report and issue its written decision to Applicant regarding the same which shall be binding and conclusive.

(e) The State shall be under no obligation to pay and release any IAF Disbursement funds until Applicant has fulfilled the requirements of this Article III, each of the conditions precedent listed in ARTICLE V have been satisfied and the State has approved the amount claimed in the Annual Earned Credits Report submitted by Applicant or that portion of the amount that complies with this Agreement. The State's obligation to pay and release any previously undistributed IAF Disbursement terminates upon the occurrence or existence of any Event of Default described in Section 9.1 of this Agreement. In no event shall the State disburse funds exceeding the amount of the Total IAF Disbursements.

ARTICLE IV EARNED CREDITS

The amount of IAF Proceeds which an Applicant is entitled to receive for any IAF Disbursement Period shall be measured by the number of Earned Credits that it earns and retains each year. This process is further described in the following sections.

4.1 EARNED CREDITS PER FTES. Applicant may claim one Earned Credit for each FTE that (i) Applicant has employed at the Project for the full twelve (12) months of the immediately preceding IAF Disbursement Period in addition to the number of its Base Year Qualifying FTES and (ii) has been paid a wage of at least ____ % of the County Median Salary (the Qualified FTES).

4.2 IAF DISBURSEMENT PER EARNED CREDIT. Applicant shall be entitled to an IAF Disbursement of \$____ enter dollar value here ____ for each Earned Credit claimed by Applicant during the immediately preceding IAF Disbursement Period and approved by the Administrator. However, in no case shall any IAF Disbursement be paid more than once for the same Earned Credit (i.e. the same Qualified FTE hired by Applicant and that was previously counted and claimed by Applicant as an Earned Credit on an earlier Annual Earned Credits Report).

4.3 RETENTION AND CALCULATION OF EARNED CREDITS. Once Applicant has claimed one or more Qualified FTES on its Annual Earned Credits Report as an Earned Credit, the Administrator has approved the Earned Credit(s) and the State has allocated and distributed IAF Disbursements to Applicant for such Earned Credit(s), then Applicant shall insure that it shall continue to employ at least the same total number of such Qualified FTES, including the Base Year Qualifying FTES, for an additional two (2) IAF Disbursement Periods. In case any Earned Credits were approved for the first, second or third IAF Disbursement Period, Applicant shall retain at least the same, total number of FTES which were the basis of approving the Earned Credits for an additional two of the first five IAF Disbursement Periods. Similarly, in case any Earned Credits were approved for the fourth or fifth IAF Disbursement Periods, then Applicant shall retain at least the same, total number of Qualified FTES which were the basis for approving the Earned Credits for an additional two of the fourth, fifth, sixth and/or seventh IAF Disbursement Periods. The following examples set forth how these requirements shall be applied:

(a) 1st Scenario: Applicant starts with 0 Base Year Qualifying FTES. In the first IAF Disbursement Period, Applicant employs a total of 5 Qualified FTES. In the second IAF Disbursement Period Applicant continues to employ a total of 5 Qualified FTES. In the third IAF Disbursement Period Applicant adds 5 Qualified FTES so that it employs a total of 10 Qualified FTES. In the fourth and fifth IAF Disbursement Periods, Applicant does not hire any new Qualified FTES but continues to employ a total of 10 Qualified FTES. In this scenario, Applicant will receive 5 Earned Credits for the first IAF Disbursement Period, 0 Earned Credits for the second IAF Disbursement Period, 5 Earned Credits for the third IAF Disbursement Period, and 0 Earned Credits for each of the fourth and fifth

IAF Disbursement Periods (assuming that Applicant has otherwise met all of the terms of this Agreement as determined by the Administrator). The IAF Proceeds for the first 5 Earned Credits will be distributed to Applicant within the first ninety (90) days of the second IAF Disbursement Period, and the IAF Proceeds for the second 5 Earned Credits will be distributed to Applicant within the first ninety (90) days of the fourth IAF Disbursement Period.

(b) 2nd Scenario: Applicant starts with 0 Base Year Qualifying FTEs. In the first IAF Disbursement Period, Applicant employs a total of 5 Qualified FTEs. In the second IAF Disbursement Period Applicant terminates 2 Qualified FTEs so that it then employs a total of 3 Qualified FTEs. In the third IAF Disbursement Period Applicant adds 5 Qualified FTEs so that it employs a total of 8 FTEs. In the fourth and fifth IAF Disbursement Periods, Applicant does not hire any new FTEs but continues to employ a total of 8 FTEs.

In this scenario, Applicant will receive 5 Earned Credits for the first IAF Disbursement Period, 0 Earned Credits for the second IAF Disbursement Period, 3 Earned Credits for the third IAF Disbursement Period, and 0 Earned Credits for each of the fourth and fifth IAF Disbursement Periods (assuming that Applicant has otherwise met all of the terms of this Agreement as determined by the Administrator). The 2 Qualified FTEs terminated in the second IAF Disbursement Period are deducted from the 5 Earned Credits hired in the third IAF Disbursement Period, such that Applicant shall only be deemed to have hired an additional 3 Qualified FTEs in the third Disbursement Period. The IAF Proceeds for the first 5 Earned Credits will be distributed to Applicant within the first ninety (90) days of the second IAF Disbursement Period. No Default or recapture shall be enforced against Applicant for the Qualified FTEs terminated in the second IAF Disbursement Period (see Section 4.4 for a further discussion of the recapture provisions). The IAF Proceeds for the 3 Earned Credits earned in the third IAF Disbursement Period will be distributed to Applicant within the first ninety (90) days of the fourth IAF Disbursement Period.

(c) 3rd Scenario: Applicant starts with 0 Base Year Qualifying FTEs. In the first IAF Disbursement Period, Applicant employs a total of 5 Qualified FTEs. In the second and third IAF Disbursement Periods Applicant continues to employ a total of 5 Qualified FTEs but otherwise hires no additional FTEs. In the fourth IAF Disbursement Period Applicant adds 5 more Qualified FTEs to employ a total of 10 Qualified FTEs. In the fifth IAF Disbursement Period Applicant terminates 5 Qualified FTEs so that it employs a total of 5 Qualified FTEs. In the sixth IAF Disbursement Period Applicant adds 5 more Qualified FTEs to employ a total of 10 Qualified FTEs and in the seventh IAF Disbursement Period, Applicant does not hire any new Qualified FTEs but continues to employ a total of 10 Qualified FTEs.

In this scenario, Applicant will receive 5 Earned Credits for the first IAF Disbursement Period, 0 Earned Credits for the second and third IAF Disbursement Periods, 5 Earned Credits for the fourth IAF Disbursement Period, and 0 Earned Credits for the fifth, sixth and seventh IAF Disbursement Periods (assuming that Applicant has otherwise met all of

the terms of this Agreement as determined by the Administrator). The IAF Proceeds for the first 5 Earned Credits will be distributed to Applicant within the first ninety (90) days of the second IAF Disbursement Period, and the IAF Proceeds for the second 5 Earned Credits will be distributed to Applicant within the first ninety (90) days of the fifth IAF Disbursement Period. The 5 Qualified FTEs terminated in the fifth IAF Disbursement Period are offset by the 5 FTEs added in the sixth IAF Disbursement Period and since there were a total of 10 Qualified FTEs employed by Applicant for at least three Qualified IAF Disbursement Periods no Default or recapture provision is otherwise applicable.

4.4 RECAPTURE FOR FAILURE TO RETAIN EARNED CREDITS. If the State discovers that any Earned Credits approved by the State for the first, second, third, fourth or fifth IAF Disbursement Periods should have been disallowed because Applicant did not retain the total number of Qualified FTEs claimed as Earned Credits for at least three (3) total IAF Disbursement Periods (comprised of the IAF Disbursement Period in which the Earned Credit was first claimed plus an additional two (2) IAF Disbursement Periods), such occurrence in and of itself shall not constitute an Event of Default. Rather, unless an Event of Default has occurred, no action shall be taken by the State to recapture any previously approved Earned Credits, until at the earliest the conclusion of the fifth IAF Disbursement Period. After Applicant has submitted its Annual Earned Credits Report for the fifth IAF Disbursement Period and the Administrator has verified that Applicant has failed to retain the total number of new Qualified FTEs originally claimed in the first, second and third IAF Disbursement Periods, the State may recapture the amount of the disallowed IAF Disbursements equal to the product of the number of invalid Earned Credits and the amount of IAF Disbursements per Earned Credit (described in Section 4.2). Likewise, in the case of any new Qualified FTEs originally claimed in the fourth and fifth IAF Disbursement Periods (as the basis for its new Earned Credits), the State shall generally take no action until the conclusion of the seventh IAF Disbursement Period if Applicant fails to retain the total number of new Qualified FTEs claimed and approved for the minimum three (3) IAF Disbursement Periods (comprised of the fourth or fifth IAF Disbursement Period for which the Earned Credits were originally claimed and approved and two of the remaining fifth, sixth or seventh IAF Disbursement Periods, as applicable). The following examples set forth how these requirements shall be applied:

(a) If, in the 1st Scenario set forth in Section 4.3(a) above, Applicant had in the third IAF Disbursement Period terminated 4 of the 5 Qualified FTEs originally claimed in the first IAF Disbursement Period but otherwise everything else remains the same, then Applicant will not have met its obligation to retain 4 of the 5 Earned Credits (and 4 of the 5 Qualified FTEs) for the minimum three (3), IAF Disbursement Periods. Therefore, after Applicant had submitted its Annual Earned Credits Report for the fifth IAF Disbursement Period, the Administrator could recapture from the Applicant the full amount of the IAF Disbursements previously paid to Applicant for the 4 disallowed Earned Credits. Applicant would be entitled to retain those IAF Disbursements paid for the 1 Earned Credit (and thus Qualified FTE) that it retained for the required three IAF Disbursement Periods (including the period in which it was originally claimed).

(b) If, in the 3rd Scenario set forth in Section 4.3(c) above, Applicant had not hired any additional Qualified FTEs in the sixth and seventh IAF Disbursement Periods but everything else remained the same, then the Administrator would only recapture the IAF Disbursements made for the 5 Earned Credits (and thus 5 Qualified FTEs) approved in the fourth IAF Disbursement Period. This recapture would occur after Applicant had filed the Annual Earned Credits Reports for the sixth IAF Disbursement Period. In this case the Administrator would not be required to wait until after the seventh IAF Disbursement Period to recapture because even if Applicant had hired an additional 5, 7 or 10 Qualified FTEs in the seventh IAF Disbursement Period, Applicant would not have satisfied its obligation to insure that it retained the same total number of Earned Credits (and Qualified FTEs) for at least three (3) IAF Disbursement Periods (including the period in which the Earned Credits were originally claimed). Of course, no recapture would occur for the IAF Disbursements given for the 5 Earned Credits originally claimed in the first IAF Disbursement Period.

(c) Within thirty (30) days of the State's written notice to Applicant of the State's disallowance of the formerly approved Earned Credits, Applicant shall repay the corresponding amount of IAF Proceeds to the Administrator on behalf of the State. Any repayments not received by the State within thirty (30) days of such notice shall thereafter bear interest at the rate of 10% per annum from the original distribution date of the disallowed IAF Disbursement until such time as the repayment has been made in full to the State. Each payment of a disallowance hereunder shall be made to the State in immediately available funds. Alternatively, at the time the State provides the written notice of disallowance of the formerly approved Earned Credits, the State may, in its sole discretion, modify or otherwise change the foregoing interest, time and other terms of repayment. All repayments received by the State will be applied in the following order: (1) toward the satisfaction of attorneys' fees and costs incidental thereto and to costs and expenses incurred by the State, the Administrator or its agent to enforce Applicant's obligations under this Agreement; (2) toward the reduction of any and all accrued and unpaid interest; and (3) toward the reduction of the disallowed IAF Disbursement.

ARTICLE V CONDITIONS PRECEDENT TO DISBURSEMENT

If, by the end of the first IAF Disbursement Period, Applicant has not achieved at least 50% of the employment growth that is projected for the first year in Attachment IV regarding new employees who are paid at least the Qualifying Annual Salary, any obligation of the State to make disbursements under this agreement shall terminate and Applicant shall not be entitled to any disbursement for the first IAF Disbursement Period or any other IAF Disbursement Period hereunder unless and until such right is reinstated by a vote of the Board of Business and Economic Development. In addition, the obligation of the State to disburse any funds under this Agreement is subject to Applicant's satisfaction and completion of all of the following conditions precedent, each of which shall be satisfied and completed (as determined in good faith by the State) prior to or concurrently with the payment and release by the State of any IAF Disbursement:

5.1 NO CHANGE. No material adverse change shall have occurred in the business, operations, condition (financial or otherwise) or prospects of Applicant, taken as a whole, since the date hereof.

5.2 NO DEFAULT. No Default shall have occurred.

5.3 CERTIFICATE OF COMPLIANCE. An authorized Officer of Applicant shall execute and deliver to the State a certificate of compliance, the form of which is attached hereto as Attachment V, certifying that:

- (a) Applicant is not in Default in the performance of any of its covenants or agreements contained in any IAF Document.
- (b) Applicant's representations and warranties contained in this Agreement are true and correct as of the date of the certificate of compliance.
- (c) The conditions specified in Sections 5.1 and 5.2 of this Agreement have been satisfied and completed.
- (d) Applicant has not engaged any person to find a location out of the State to move or relocate the Project (and/or the business functions conducted at the Project) nor has Applicant entered into any agreement with respect to the same.
- (e) Applicant has no present plans or intentions to relocate all or any part of the Project (and/or the business functions conducted at the Project) outside the State.
- (f) If Applicant has such plans or intentions to relocate all or any part of the Project, the authorized Officer of Applicant shall provide a description of these plans and intentions together with Applicant's best estimate of the amount of any recapture that the State would be entitled to receive under Article IV of this Agreement.

5.4 TOTAL IAF DISBURSEMENTS SUBJECT TO LEGISLATIVE APPROPRIATION. The Legislature of the State of Utah has provided, in Section 9-2-1204(5) of the Act, that surplus General Fund revenues may be earmarked to the Industrial Assistance Fund in an amount equal to any credits used in lieu of cash repayment of a fund loan. Any disbursement to Applicant, pursuant to this Agreement is conditioned upon an appropriation from the Legislature in an amount sufficient to provide the Total IAF Disbursements of this Agreement and any other agreement for loans and assistance from the Industrial Assistance Fund to any Person. If the Legislature does not appropriate revenues, to be used for purposes of the fund in an amount sufficient to provide the Total IAF Disbursements of this Agreement and all other loans and assistance agreed to by the Administrator from the Industrial Assistance Fund, the Administrator, in the Administrator's sole discretion, may reduce in whole or in part the amount of the Total IAF Disbursements not previously disbursed.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

To induce the State to make each and any of the IAF Disbursements, Applicant hereby represents and warrants to the State that:

6.1 EXISTENCE AND QUALIFICATION; POWER. Applicant is a ____ duly formed and validly existing under the laws of the state of ____ and is in good standing and is duly qualified to do business in the State of Utah. Applicant has all requisite power and authority to conduct its business, to own and lease its properties and to execute, deliver and perform all of its obligations under the IAF Documents.

6.2 AUTHORITY; COMPLIANCE. The individuals executing this Agreement and the other IAF Documents on behalf of Applicant are duly authorized to do so. The execution, delivery and performance by Applicant of the IAF Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action, and do not and will not:

(a) Require any consent or approval not heretofore obtained of any director, stockholder, creditor or any other person;

(b) Violate or conflict with any provision of Applicant's charter, organizational documents, or amendments thereto, as applicable;

(c) Violate or conflict with any provision of any agreement, note, lease or instrument to which it is a party;

(d) Violate any provision of any federal, state or local law, rule or regulation; and Applicant is not in default under any law, order, writ, judgment, injunction, decree or award or any indenture, agreement, note, lease or instrument in any respect that is materially adverse to the interests of the State or that would have any material adverse effect on the business, operations or condition (financial or otherwise) of Applicant taken as a whole or its compliance with this Agreement.

6.3 COMPLIANCE WITH LAW. Applicant is in compliance with all laws and other legal requirements applicable to its business, has obtained authorizations, consents, approvals, orders, licenses and permits from and has accomplished all filings, registrations and qualifications with, or obtained exemptions from any of the foregoing from, any governmental agency in the above referenced jurisdiction that is necessary for the transaction of its business, except where the failure so to comply, file, register, qualify or obtain exemptions would not have a material adverse effect on the business, operations or condition (financial or otherwise) of Applicant taken as a whole.

6.4 FINANCIAL STATEMENTS. Applicant has furnished to the State the consolidated balance sheet of Applicant for its fiscal year ended ____ and consolidated statements of profit and loss and of changes in financial position of Applicant for its fiscal year then

ended. Such financial statements fairly represent the financial condition, results of operations and changes in financial position of Applicant as at such date and for such period, in conformity with GAAP.

6.5 BINDING OBLIGATIONS. Each of the IAF Documents to which Applicant is a party will, when executed and delivered by Applicant, constitute the legal, valid and binding obligation of Applicant, enforceable against Applicant in accordance with its terms.

6.6 DISCLOSURE. No written statement made by Applicant to the State in connection with this Agreement or Applicant's application for IAF funds contains any untrue statement of a material fact or omits a material fact necessary to make the statement made not misleading. To the best knowledge of Applicant there is no fact which Applicant has not disclosed to the State in writing which materially and adversely affects nor, so far as Applicant can now foresee, is reasonably likely to prove to affect materially and adversely the business, operations, properties, prospects, profits or condition (financial or otherwise) of Applicant taken as a whole or the ability of Applicant to perform its obligations under the IAF Documents.

6.7 NO MATERIAL ADVERSE CHANGES. Since the Effective Date, Applicant has not suffered any one or more changes in its condition (financial or otherwise) or its assets, properties, liabilities, or prospects, which alone or in the aggregate would be materially adverse to Applicant, taken as a whole, and Applicant has operated its business only in the usual and ordinary course.

6.8 INSOLVENCY AND RELATED MATTERS. Applicant is able to pay its debts as they mature, and has not: (a) made any assignment for the benefit of creditors; (b) admitted in writing its inability to pay its debts as they mature; (c) applied for or consented to the appointment of a receiver, trustee or similar official for its affairs; or (d) been the subject of any bankruptcy, insolvency, reorganization or liquidation proceeding, or any other proceeding for relief under any bankruptcy law or any law for the relief of debtors or benefit of creditors.

6.9 BASE YEAR QUALIFYING FTEs. The number of employees listed in Attachment I as Base Year Qualifying FTEs is the true and accurate number of employees employed by Applicant at the Project site in the State as of the Effective Date which are paid a salary of at least the Qualifying Annual Salary.

6.10 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations and warranties contained herein or in any certificate, attachment, schedule or other writing delivered by or on behalf of Applicant shall survive at least two years after the final portion of the Total IAF Disbursements has been made.

ARTICLE VII AFFIRMATIVE COVENANTS

During the Term of this Agreement, unless the State otherwise consents in writing, Applicant shall fully perform and satisfy the following obligations:

7.1 STATEMENTS AND REPORTS. Applicant shall deliver to the State at Applicant's sole expense:

(a) As soon as available, and in no event later than 90 days after the close of each fiscal year of Applicant: (i) consolidated balance sheets of Applicant as of the end of such fiscal year, setting forth in comparative form the corresponding figures as of the end of their preceding fiscal year; and (ii) consolidated statements of profit and loss and of changes in financial position of Applicant for such fiscal year, setting forth in comparative form the corresponding figures for their previous fiscal year, all in reasonable detail. Such balance sheets and profit and loss statements shall be prepared in accordance with GAAP, consistently applied, and shall be accompanied by a report of an independent auditor, if the above financial statements have been audited.

(b) Copies of any and all detailed audit, review or completion reports, as well any other special reports, within thirty (30) days after their submittal to Applicant by Applicant's auditors and/or independent accountants in connection with the accounts or books of Applicant or any audit of any of them.

(c) Applicant need not personally deliver these consolidated balance sheets, consolidated statements, audit, review and completion reports to the Administrator described in Sections 7.1 (a) and (b), provided that Applicant is a publicly traded company on one of the major, U.S. stock exchanges and that the Administrator can easily obtain electronic or hard copies of such actual documents. If for any reason the Administrator cannot easily obtain such documents, then Applicant shall promptly provide them to the Administrator.

(d) Immediately upon becoming aware of the existence of any condition or event which constitutes a Default, a written notice specifying the nature and period of existence thereof and what action Applicant is taking or proposes to take with respect thereto.

(e) Promptly after any reasonable request by the State, such other data and information regarding Applicant, its affiliates and/or the Project. If Applicant desires to protect the confidentiality of any information supplied, Applicant shall file a business confidentiality claim as set forth in Section 10.7 hereinafter.

(f) As soon as available, and in no event later than sixty (60) days after the end of each IAF Disbursement Period year, the Annual Earned Credits Report shall be submitted to the Administrator.

(g) It is expressly agreed by the parties that the Administrator shall determine the manner of recognizing and accounting for Earned Credits claimed by Applicant, but only in a manner consistent with this Agreement. Upon receipt by the State of the Annual Earned Credits Report the Administrator or his or her staff shall review such report and to the extent required, may request additional information from Applicant which is reasonably

necessary to determine the validity of any claimed Credits. Applicant agrees to promptly provide all such information to the State. To the extent that the Administrator or his or her staff is still unable to reasonably verify the accuracy of any claimed Credits, the Administrator shall cause its internal auditor to audit the amount of such claimed Credits. Applicant shall reasonably cooperate with such audit, but the costs thereof shall be paid by the State. If upon the completion of such internal audit, the Administrator is still unable to reasonably determine the validity of any claimed Credits, the Administrator may select and hire an independent auditor to audit the amount of such Credits claimed by Applicant. Any costs associated with the employment of such independent auditor shall be paid in total by Applicant upon presentation of the State's invoice and supporting information for the same. Audit expenses may only be paid by Applicant in Cash and not Earned Credits. The independent auditor will be required to sign a confidentiality agreement that provides that release of any information obtained in the audit is limited to release to Applicant and to the State. If Applicant desires to protect the confidentiality of any information supplied to the State as part of any audit, Applicant shall file a business confidentiality claim as set forth in Section 10.7 hereinafter. Any Credits claimed by Applicant that are not supported by the foregoing audit procedures shall be disallowed. If such disallowance results in a determination that Applicant has received IAF Proceeds in excess of those earned, Applicant shall repay the disallowed portion of the IAF Disbursement(s) to the State pursuant to Section 4.4 above.

(h) At least 180-day prior written notice containing a summary and description of any plans, agreements, letters of intent, offers, solicitations or intentions by or to Applicant to (i) move or relocate the Project and/or the business functions conducted at the Project out of the State, (ii) sell, rent or license the Project, or (iii) discontinue, sell, cease operating or terminate the Project and/or the business functions conducted at the Project.

7.2 REVISIONS OR UPDATES TO ATTACHMENTS. Should any of the information or disclosures provided in Attachments I, II, III, or IV originally attached hereto become outdated or incorrect in any material respect, at the time of and in connection with each request for disbursement, Applicant shall provide to the State such revisions or updates to such Attachments as may be necessary or appropriate to update or correct such Attachments. However, no such revisions or updates to any Attachments shall be deemed to have amended, modified or superseded such Attachments as originally attached hereto, or to have cured any breach of any warranty or representation resulting from the inaccuracy or incompleteness of any such Attachments, unless and until the State in its sole and absolute discretion, shall have accepted in writing such revisions or updates to such Attachments.

7.3 PRESERVATION OF EXISTENCE. Applicant shall preserve and maintain its existence, licenses, rights, franchises and privileges in the jurisdiction of its formation and all authorizations, consents, approvals, orders, licenses, permits or exemptions from, or registrations with, any governmental agency that are necessary for the transaction of its business, and qualify and remain qualified to transact business in Utah and in the jurisdiction of incorporation.

7.4 COMPLIANCE WITH LAWS. Applicant shall comply with the requirements of all applicable laws and orders of any governmental agency, noncompliance with which could materially adversely affect the business, operations or conditions (financial or otherwise) of Applicant.

7.5 KEEPING OF RECORDS AND BOOKS OF ACCOUNT. Applicant shall keep adequate records and books of account reflecting all financial transactions relating to the Project in conformity with GAAP.

7.6 NO TRANSFER OF PROJECT. Applicant shall not sell, rent, license, transfer, convey or assign its rights, interests and titles in the Project, the business functions conducted at the Project and/or the Project's assets (excluding sales or transfers of the Project's assets in the ordinary course of business) during the five-year period beginning with the payment of the first IAF Disbursement without (i) the buyer's assumption of Applicant's duties and obligations described herein which assumption shall not relieve Applicant of its duties to insure full performance hereunder, and (ii) the State's prior written consent which may be given or withheld in the sole discretion of the State.

ARTICLE VIII ACCELERATION AND RECAPTURE

In the event that Applicant terminates or discontinues the daily operations at the Project, terminates or discontinues the business functions conducted at the Project or moves or relocates the Project out of the State prior to the end of the seventh IAF Disbursement Period (the "Acceleration Event"), then any Earned Credits that have been approved and for which IAF Proceeds have been disbursed but have not yet been retained as of the date of the Acceleration Event (for the two (2) full IAF Disbursement Periods after the IAF Disbursement Period for which they were first claimed) shall be disallowed and recaptured by the State as provided in Article IV above. In such event, Applicant shall immediately repay in cash to the State the disallowed IAF Proceeds, together with interest and any and all other costs and fees as provided in this Agreement.

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The existence or occurrence of any one or more of the following events, whatever the reason thereof, shall constitute an Event of Default:

(a) Applicant's failure to repay any disallowance assessed under Section 4.4 above, the amount required to be repaid under Article VIII above, or any portion thereof, or any other amount due to the State under this Agreement when due.

(b) Any failure by Applicant to notify the State of a Default as required by Section 7.1(d) of this Agreement.

(c) Applicant's failure to perform or observe any other term, covenant or agreement contained in any IAF Document required to be performed or observed by it within thirty (30) days after the State has given Applicant notice of such Default, or such longer time as the parties mutually agree.

(d) If any representation, warranty or covenant made by Applicant in this Agreement, in any IAF Document or in any certificate, agreement, instrument or other document made or delivered by Applicant pursuant to or in connection with any IAF Document proves to have been incorrect in any material respect when made or in any respect that is adverse to the interests of the State.

(e) If Applicant terminates or discontinues daily operations or moves or relocates the Project or the business functions conducted at the Project out of the State prior to the end of the seventh IAF Disbursement Period.

(f) If any IAF Document, at any time after its execution and delivery and for any reason other than the agreement of the State or expiration of the Term of this Agreement, ceases to be in full force and effect or is declared by a court of competent jurisdiction to be null and void, invalid or unenforceable in any respect, or if Applicant denies that it has any or further obligation under any IAF Document, or purports to revoke, terminate or rescind the same.

(g) If Applicant is the subject of an order for relief in a bankruptcy case, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors.

(h) If there is an appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for Applicant, either upon Applicant's petition or consent or if such Person is appointed without Applicant's consent and the appointment continues undischarged or un-stayed for thirty (30) calendar days.

(i) If any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship or conservatorship is instituted with or without the consent of Applicant and continues un-dismissed or un-stayed for thirty (30) calendar days.

(j) If any judgment, writ, warrant, attachment, execution or similar process is issued or levied against all or any material part of the property of Applicant and is not released, vacated or fully bonded within thirty (30) calendar days after its issue or levy.

(k) If Applicant is dissolved, liquidated or all or substantially all of the assets of Applicant are sold, licensed or otherwise transferred in violation of the provisions of this Agreement without the written consent of the State.

9.2 REMEDIES UPON EVENT OF DEFAULT. Without limiting any other rights or remedies of the State provided for elsewhere in this Agreement at law or in equity, by statute, by regulation, by common law or otherwise:

(a) Upon the occurrence of any Default or Event of Default the State may refuse to grant any IAF Disbursements claimed by Applicant until such Default or Event of Default is cured, regardless of whether such IAF Disbursements were claimed before or after the Default or Event of Default, and may also accelerate and recapture any Earned Credits that have not yet been retained as permitted in Article VIII above.

(b) Upon the occurrence of any Event of Default under Section 7.1 (h) with the passage of time, the State may take such action as it deems necessary to protect the interests of the State under the IAF Documents.

(c) The order and manner in which the State's rights and remedies are to be exercised shall be determined by the State in its sole discretion, and all payments received by the State shall be applied first to the costs and expenses of the State, second to the payment of accrued and unpaid interest due to and including the date of such payment, third, to the payment of all unpaid amounts due under this Agreement. No application of partial payments will cure any Event of Default, or prevent the exercise, or continued exercise, of rights or remedies of the State hereunder, or at law, or in equity.

(d) Upon the occurrence of any event that would be an Event of Default under Section 7.1(h) with the passage of time, the State may take such action as it deems necessary to protect the interests of the State under the IAF Documents.

(e) Upon the occurrence of any Event of Default, the State, or any employee, agent or representative thereof, may have reasonable access to examine, audit and make copies and abstracts from the records and books of account of Applicant regarding the Project and may visit and inspect the Project during reasonable business hours upon reasonable notice and, upon request, Applicant will furnish promptly to the State true copies of all documents and other information that has been disclosed to the U.S. Securities and Exchange Commission, or should have been disclosed to the U.S. Securities and Exchange Commission.

ARTICLE X MISCELLANEOUS

10.1 CUMULATIVE REMEDIES; NO WAIVER. The rights, powers, privileges and remedies of the State provided herein are cumulative and not exclusive of any right, power, privilege or remedy provided at law or in equity. No failure or delay on the part of the State in exercising any right, power, privilege or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of the same or any other right, power privilege or remedy. The terms and conditions of Article V hereof are inserted for the sole benefit of State and the State may waive them in whole or in part, with or without imposing other terms or conditions.

10.2 AMENDMENTS; CONSENTS. No amendment, modification, supplement, extension, termination or waiver of any provision of this Agreement; no approval or consent thereunder, and no consent to any departure by Applicant therefrom may in any event be effective unless approved in writing signed by the Parties.

10.3 NOTICES. All written notices, demands and requests of any kind which any party may be required or may desire to serve upon the other party hereto in connection with this Agreement may be delivered by courier or other means of personal service, or by registered or certified mail. Any such notice or demand so delivered by registered or certified mail shall be deposited in the United States mail, or in the case of courier, deposited with the courier, with postage thereon fully prepaid. All notices shall be addressed to the parties to be served as follows:

If to the State:
Administrator
Industrial Assistance Fund
Governor's Office of Economic Development
324 South State Suite 500
Salt Lake City, Utah 84111

With a copy to: Counsels name
Counsel's address

If to Applicant: (Company Representative(s))
don't forget the Address

With a copy to: (Company Legal Counsel)
don't forget the Address

Service of any such notice or demand by mail so made shall be deemed complete three (3) days after deposit in the United States Postal Service with postage attached as shown or the date of actual delivery, whichever is earlier. Any party hereto may from time to time by notice in writing served upon the other as aforesaid designate a different mailing address or a different or additional person to which all such notices or demands thereafter are to be addressed.

10.4 BINDING EFFECT; ASSIGNMENT. This Agreement shall be binding upon the parties and their respective successors and assigns, except that Applicant may not assign, sell, transfer or convey its rights or any interest under this Agreement without the prior written consent of the State which may be withheld for any reason in the sole discretion of the State.

10.5 NON-LIABILITY OF THE STATE. Applicant acknowledges and agrees that:
(a) By accepting or approving anything required to be observed, performed, fulfilled or given to the State pursuant to this Agreement, including any certificate, financial statement, insurance policy or other document, the State shall not be deemed to have

warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by the State;

(b) The relationship between Applicant and the State is and at all times will be and remain solely that of an Applicant and grantor of financial assistance. The State shall not under any circumstance be construed to be a partner or joint venturer of Applicant. The State shall under no circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with Applicant, or to owe any fiduciary duty to Applicant. The State does not undertake or assume any responsibility or duty to Applicant to select, review, inspect, supervise, pass judgment upon or inform Applicant on any matter in connection with their property; Applicant shall rely entirely upon its own judgment with respect to such matters; and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by the State in connection with such matters is solely for the protection of the State and neither Applicant nor any other person is entitled to rely thereon; and

(c) The State shall not be responsible or liable to any person for any loss, damage, liability or claim of any kind relating to injury or death to Persons or damage to property caused by the actions, inaction or negligence of Applicant and Applicant hereby indemnifies and holds the State harmless from any such loss, damage, liability or claim.

10.6 NO THIRD PARTIES BENEFITTED. This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of Applicant and the State in connection with the Total IAF Disbursements and is made for the sole protection of Applicant and the State, and the State's successors and assigns. Except as provided in Section 10.4 no other Person shall have any rights of any nature hereunder or by reason hereof.

10.7 CONFIDENTIALITY. The parties understand and agree that access to records prepared, owned, received, or retained by the State is governed by the Utah Governmental Records Access and Management Act ("GRAMA"), Utah Code Ann. Section 63-2-101, et seq. Applicant may protect the confidentiality of any document it supplies to the State to the extent allowed by GRAMA if: (1) Applicant makes a written claim of business confidentiality under Section 63-2-308, and (2) one or more of the exceptions noted in Section 63-2-304 apply. If the State determines that a record claimed to be confidential and protected under Section 63-2-308 and Section 63-2-304 should be released, Applicant has the right to appeal the decision to release the record pursuant to Section 63-2-401 to -405. Any decision to release confidential records may be reviewed by the State Records Committee and/or the District Court of the State of Utah.

10.8 ENTIRE AGREEMENT. This Agreement, all other IAF Documents, and any document or instrument executed and delivered pursuant to this Agreement constitute and are intended to constitute the complete, entire and final agreement of the parties regarding the subject matter hereof and expressly supersede all prior agreements, written or oral,

regarding the subject matter. In the event of any conflict between provisions of this Agreement and those of any other IAF Document, the provisions of this Agreement shall control and govern; provided that the inclusion of supplemental rights or remedies in favor of the State in any other IAF Document shall not be deemed a conflict with this Agreement.

10.9 GOVERNING LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah.

10.10 SEVERABILITY. Any provision in this Agreement that is held to be inoperative, unenforceable or invalid in whole or in part as to any party or in any jurisdiction shall, as to that party or jurisdiction, be inoperative, unenforceable or invalid to such extent without affecting the remaining provisions or the operation, enforceability or validity of that provision as to any other party or in any other jurisdiction.

10.11 HEADINGS. Article and Section headings in this Agreement are included for convenience of reference only and are not part of this Agreement for any other purpose.

10.12 CHOICE OF FORUM. Except as otherwise expressly provided, the parties agree, consent to and intend that the proper and exclusive forum for any litigation of any disputes or controversies arising out of or related to the IAF Documents, together with personal jurisdiction over each of the parties, shall be a court of competent jurisdiction located in the State of Utah, County of Salt Lake.

10.13 INABILITY TO BIND THE STATE. Applicant shall have no authorization, express or implied, to bind the State to any agreement, settlement, liability, or understanding whatsoever, nor to perform any acts as agent for the State.

10.14 ATTORNEYS FEES AND OTHER EXPENSES. Notwithstanding any other provision of this Agreement, if any legal action or other proceeding is brought for the enforcement, clarification or interpretation of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, and any other fees and costs incurred in the action or proceeding, in addition to any other relief to which such party may be entitled.

10.15 TERM AND TERMINATION. This Agreement shall commence on the Effective Date and shall not end until the last to occur of (i) the last day of the seventh year term of this Agreement, (ii) the date by which the State approves the Earned Credits for the last payment made to Applicant and such Earned Credits have been retained by Applicant for the requisite amount of time, and (iii) the date by which Applicant has satisfied any and all obligations it may have under Article VIII herein (as determined in the State's sole discretion).

INTENDING TO BE LEGALLY BOUND, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

THE STATE OF UTAH

Name of Applicant

Director
IAF Administrator

Name of Applicant's Officer
Officer's Title

Executive Director
Governor's Office of Economic Development
Approval for Funding

GOED Finance Manager
Governor's Office of Economic Development
Approval for Expenditure

Contracts Number
State of Utah
Division of Finance

Attachments

ATTACHMENT I Base Year Qualifying FTEs
ATTACHMENT II Project Description
ATTACHMENT III Project Schedule
ATTACHMENT IV Projected Employment and Salary Growth
ATTACHMENT V Certificate of Compliance